

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

DANIEL W. MARTIN,

Plaintiff,

v.

ROGER L. GALLA, et al.,

Defendants.

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No. 22-05007-CV-SW-DPR

ORDER

Before the Court is Plaintiff's Motion to Strike. (Doc. 233.) Plaintiff moves for an order striking from the record the Motion to Exclude Dr. Russell Kennedy (doc. 229) and the Memorandum in Support (doc. 230) of said motion filed jointly by all Defendants. As grounds, Plaintiff claims that "said documents were not timely filed pursuant to the Court's Scheduling Order." According to Plaintiff, "the deadline for filing Daubert Motions was May 1, 2023," and the documents at issue were filed on June 30, 2023, or "60 days after the Daubert Motion deadline had expired."

Defendants responded with Suggestions in Opposition to the Motion to Strike, arguing that their Motion to Exclude Dr. Kennedy "is not an exclusionary motion premised on Daubert. Rather, it is a motion to exclude certain testimony by Dr. Kennedy and other treating physicians related to causation, prognosis, and future disability as a sanction under Fed. R. Civ. P. 37 as a result of the failure to properly identify Dr. Kennedy or any other treating physician to provide such testimony under Fed. R. Civ. P. 26(a)(2)(C)." (Doc. 245.) Plaintiff filed a reply but did not address this specific argument. (Doc. 248.)

Upon review, the Court finds Defendants' argument persuasive. In the Motion to Exclude Dr. Kennedy, Defendants claim that Plaintiff's disclosure of Dr. Kennedy as an expert witness

failed to comply with Fed. R. Civ. P. 26(a)(2) in that it lacks proper form and was untimely. Based on this alleged failure, Defendants move for sanctions pursuant to Fed. R. Civ. P. 37. Defendants do not, however, challenge either the reliability of Dr. Kennedy's testimony or the relevance of his opinion to the issues in the case. Accordingly, any deadline to file Daubert motions does not apply to the Motion to Exclude Dr. Kennedy, as it is not premised on the principles of F.R.E. 702.

Therefore, the Motion to Strike (doc. 233) is **DENIED**. On or before July 28, 2023, Plaintiff may file a response, if any, to the Motion to Exclude Dr. Russell Kennedy (doc. 229).

IT IS SO ORDERED.

/s/ David P. Rush
DAVID P. RUSH
UNITED STATES MAGISTRATE JUDGE

DATE: July 17, 2023